

# THE MAGISTRATES' COURTS (AMENDMENT) BILL, 2012

## A Bill for AN ACT of parliament to amend the Magistrates' Courts Act

**ENACTED** by the parliament of Kenya, as follows-

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| Short title.                                      | <b>1.</b> This Act may be cited as the Magistrates' Courts (Amendment) Act  |
| Amendment of section 2 of cap 10.                 | <b>2.</b> The Magistrates' Courts Act (in this Act referred to as the "Principal Act") is amended in section 2 by- <ul style="list-style-type: none"><li>(a) deleting the definition of "district magistrate's court"</li><li>(b) deleting the definition of "magistrate's court of the first class"</li><li>(c) deleting the definition of "magistrate's court of the third class"</li></ul> |
| Amendment of section 5 of cap 10.                 | <b>3.</b> The Principal Act is amended by deleting section 5 and substituting it with the following new section-  |
| Civil jurisdiction of resident magistrates courts | 5.(1)The magistrates' courts have jurisdiction in civil proceedings if the value of the subject matter does not exceed: <ul style="list-style-type: none"><li>a) seven million shillings for a chief magistrate;</li><li>b) five million shillings for a senior principal magistrate;</li><li>c) four million shillings for a principal magistrate ;</li></ul>                                |

d) three million shillings for a senior resident magistrate court and;

e) two million shillings for a resident magistrate

(2) The Chief Justice may revise the prescribed pecuniary limits by gazette notice after every three years taking into account inflation and change in economic activities.

(3) The Resident Magistrate's Court has jurisdiction in proceedings of a civil nature concerning a claim under customary law.

Amendment of section 13 of cap 10

**4.** Section 13(1) of the Principal Act is amended by deleting the words “: Provided that a district magistrate's court may in any particular case, with the written consent of the Chief Justice, sit at a specified place outside the local limits of its jurisdiction, and a consent purporting to be signed by the Chief Justice shall be presumed to be signed by him until the contrary is shown.” appearing immediately after the words “customarily held”

Repeal of section 14 of cap 10

**5.** Section 14 of the Principal Act is repealed.

Repeal of Part III of cap 10

**6.** Part III of the Principal Act is repealed.

Repeal of Part IV of cap 10

**7.** Part IV of the Principal Act is repealed.

Amendment of section 48 of cap 160

**8.** Section 48(1) of the Law of Succession Act is amended by-

(a) deleting the words “one hundred thousand shillings.” immediately after the words “gross value of which does not exceed” and

substituting there for "five hundred thousand shillings"

- (b) deleting the words "other than an application under section 76" immediately after the words "shall have jurisdiction to entertain any application"

Amendment of section 49 of cap 160.

9. Section 49 of the Law of Succession Act is amended by deleting the words "one hundred thousand Kenya shillings" immediately after the words "if the gross value of the estate of the deceased does not exceed" and replacing there for "five hundred thousand Kenya shillings"

## **Original provisions of the Magistrate's Courts Act for which amendment is proposed**

### **Section 2, Interpretation**

The deleted definitions are;

"District magistrate's court" means a court established by section 7;

"Magistrate's court of the first class" means the Resident Magistrate's Court, or a district magistrate's court held by a district magistrate having power to hold a magistrate's court of the first class;

"Magistrate's court of the third class" means a district magistrate's court held by a district magistrate having power to hold a magistrate's court of the third class;

### **Section 5. Civil jurisdiction of the resident magistrate court**

(1) Subject to any other written law the resident magistrate's Court shall have and exercise jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter in dispute does not exceed one hundred thousand shillings, or three hundred thousand shillings where the court is held by a principal or senior resident magistrate and five hundred thousand shillings where the court is held by chief magistrate or a senior principal magistrate:

Provided that the Chief Justice may, by notice in the Gazette, increase the limit of jurisdiction of-

(i) a Chief Magistrate or Senior Principal Magistrate to a sum not exceeding five hundred thousand shillings; or

(ii) a Principal Magistrate, a Senior Resident Magistrate or a Resident Magistrate to a sum not exceeding three hundred thousand shillings.

(2) The Resident Magistrate's Court shall have and exercise the same jurisdiction and powers in proceedings concerning claims under customary law as is conferred on district magistrates under section 9 (a).

### **Section 13.Places and times of sitting and distribution of business**

(1) A magistrate's court may be held at any place within the local limits of its jurisdiction, but it shall, so far as is practicable, be held at the place or places where it is regularly or customarily held:

Provided that a district magistrate's court may in any particular case, with the written consent of the Chief Justice, sit at a specified place outside the local limits of its jurisdiction, and a consent purporting to be signed by the Chief Justice shall be presumed to be signed by him until the contrary is shown.

(2) Subject to subsection (1), places and times of sittings of courts, and the distribution of business between courts, shall be in accordance with any general or special directions given by the Chief Justice.

### **Section14.Attorney general's power to determine place of sitting**

(1) Notwithstanding section 13, if at any time it appears to the Attorney-General to be necessary in the interests of public safety or for the maintenance of public order so to do, he may, after consultation with the Chief Justice, by order in writing direct that the whole or any part (however described) of any particular proceedings pending before a magistrate's court shall be held at a place specified by him in the order, and -

(a) the order shall prevail over any order, direction or process made or issued by any court, to the extent of any inconsistency between the two; and

(b) if the place specified is outside the local limits of jurisdiction of the court before which the proceedings are pending, the place specified shall be deemed, for the purposes of the proceedings, to be within the local limits of jurisdiction of the court.

(2) Every order made under subsection (1) shall be forthwith communicated to the court before which the particular proceedings are pending, and shall come into operation on the day on which it is made.

(3) An order purporting to be made by the Attorney-General under subsection (1), and to be signed by the Attorney-General, shall be presumed, until the contrary is proved, to have been so made and signed; and an order made under that subsection shall not be questioned in any legal proceedings whatsoever.

## **Part III of Cap 10**

### **6. Powers of district Magistrate**

A district magistrate shall have power to hold a magistrate's court of such class as is designated by the Judicial Service Commission.

### **7. Establishment of District Magistrates Courts**

(1) There is hereby established for each district a district magistrate's court, each of which shall be a court subordinate to the High Court and shall be duly constituted when held by a district magistrate who has been assigned to the district in question by the Judicial Service Commission.

(2) The Chief Justice may, by order, designate any two or more districts a joint district for the purposes of this Act, and thereupon those districts shall be deemed to be one district for those purposes.

(3) A district magistrate's court shall have jurisdiction throughout the district in respect of which it is established:

Provided that the Chief Justice may, by notice in the Gazette, extend the area of jurisdiction of a district magistrate's court, and the court shall then have jurisdiction throughout the extended area.

### **8. Criminal jurisdiction of district magistrate courts**

(1) A district magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a criminal nature as are for the time being conferred on district magistrates' courts by –

(a) The Criminal Procedure Code; or

(b) An order under subsection (2) of this section; or

(c) Any other written law.

(2) The Chief Justice may, by order, empower magistrates' courts of the third class to deal with particular offences in addition to those which such courts may deal with by virtue of paragraphs (a) and (c) of subsection (1):

Provided that an order under this subsection shall not be made unless a draft thereof has been laid before the National Assembly and approved by resolution of the Assembly.

### **9. Civil jurisdiction of district magistrate courts**

A district magistrate's court shall have and exercise jurisdiction and powers in proceedings of a civil nature where either –

(a) The proceedings concern a claim under customary law; or

(b) The value of the subject matter in dispute does not exceed five thousand shillings or ten thousand shillings where the court is constituted by a district magistrate having power to hold a magistrate's court of the first class.

## **Part IV of Cap 10**

### **10. Appeal from certain district magistrates courts in criminal matters**

(1) Any person who is convicted of an offence on a trial held by a magistrate's court of the third class, or where a person charged with an offence has been acquitted on such a trial, the Attorney-General may appeal against his conviction or sentence, or both, or against the acquittal, as the case may be, to the Resident Magistrate's Court:

Provided that no appeal shall lie in the case of a person who pleaded guilty and was convicted on that plea, except as to the legality or extent of the sentence.

(2) An appeal shall be by way of petition, specifying the grounds of the appeal, and shall be entered within a period of fourteen days after the date of the decision or order appealed against:

Provided that the higher court may for good reason extend the period either before or after it has expired.

### **11. Appeal from certain district magistrate courts in civil matters**

(1) Any person who is aggrieved by an order of a magistrate's court of the third class made in proceedings of a civil nature may appeal against the order to a magistrate's court of the first class.

(2) An appeal shall be by way of petition, specifying the grounds of the appeal, and shall be entered within a period of twenty-eight days after the date of the order appealed against:

Provided that the higher court may for good reason extend the period either before or after it has expired.

### **12. Powers of court on appeal**

(1) In the exercise of its appellate jurisdiction under section 10 or 11, the higher court shall have power-

(a) to direct the lower court to take additional evidence and to certify the evidence to it, or, for reasons to be recorded in writing, to itself hear additional evidence;

(b) Whether or not additional evidence is heard or taken, to confirm, reverse, amend or vary in any manner the order appealed against (including power to substitute a conviction or a conviction and sentence for an acquittal):

Provided that -

(i) The order as altered shall not be in excess of the jurisdiction of the lower court; and

(ii) no conviction or conviction and sentence shall be substituted for an acquittal, and no sentence shall be enhanced, unless the accused or convicted person, as the case may be, has first been given an opportunity of being heard;

(c) To quash any proceedings (including proceedings which terminated in an acquittal) and, where it is considered desirable, to order the case to be heard *de novo* either before the lower court or before some other magistrate's court having jurisdiction or before itself:

Provided that -

(i) where the court orders a criminal case to be heard *de novo*, it shall take security for the appearance of the accused person before the court before which the case is to be heard or, if it is appropriate, remand him in custody to be brought before such court; and any such security shall be treated as if it had been taken by the court which is to hear the case; and

(ii) where proceedings are quashed and the case is ordered to be reheard, no plea of *resjudicata*, *autrefois acquitorautrefois convict* shall be entertained in respect of any order or decision in the proceedings so quashed;

(d) to make any other order which might have been made, or to exercise any power which might have been exercised by the lower court.

(2) On an appeal under section 10 or 11, the higher court or the lower court may, for reasons to be recorded in writing -

(a) Where the appellant has been sentenced to imprisonment, order -

(i) That the appellant be released on bail with or without sureties pending the hearing of the appeal; or

(ii) That the execution of the sentence be suspended pending the hearing of the appeal, in which case the appellant shall be treated as a remand prisoner pending the hearing of the appeal:

Provided that, if the appeal is ultimately dismissed, or if the original sentence of imprisonment is confirmed or some other sentence of imprisonment is substituted for it, the time during which the appellant has been released on bail or during which the sentence has been suspended shall be excluded in computing the term of imprisonment served by him; and

(b) in any other case, order that the execution of the order appealed against shall be suspended pending the hearing of the appeal.

(3) Where the higher court determines an appeal, it shall certify its order to the lower court, which shall thereupon make such orders as are requisite and conformable to the order, and the records of the lower court shall be amended accordingly.

### **Original provisions of the Law of Succession Act for which amendment is proposed**

#### **Section 48, Jurisdiction of magistrates**

(1) Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a resident magistrate shall have jurisdiction to entertain any application other than an application under section 76 and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed one hundred thousand shillings.

(2) For the avoidance of doubt it is hereby declared that the Kadhis courts shall continue to have and exercise jurisdiction in relation to the estate of a deceased Muslim for the determination of questions relating to inheritance in accordance with Muslim law and of any other question arising under this Act in relation to such estates:

Provided that for the purpose of this section in any place where both the high court and a resident magistrate's court are available, the high Court shall have exclusive jurisdiction to make all grants of representation and determine all disputes under this Act.

#### **Section 49, Territorial jurisdiction of magistrates**

The resident magistrate within whose area a deceased person had his last known place of residence shall, if the gross value of the estate of the deceased does not exceed one hundred thousand shillings, have in respect of that estate the jurisdiction conferred by section 48:

Provided that -

- (i) the magistrate may, with the consent or by the direction of the High Court, transfer the administration of an estate to any other resident magistrate where it appears that the greater part of the estate is situated within the area of that other magistrate or that there is other good reason for the transfer;
- (ii) if the deceased had his last known place of residence outside Kenya, the High Court shall determine which magistrate shall have jurisdiction under this section;
- (iii) every resident magistrate shall have jurisdiction, in cases of apparent urgency, to make a temporary grant of representation limited to collection of assets situated within his area and payments of debts, regardless of the last known place of residence of the deceased.

### **MEMORANDUM OF OBJECTS AND REASONS**

**Clause 1** provides for the short title of the proposed Amendment Act.



**Clause 2** seeks to amend Section 2 of cap 10 by deleting the definitions associated with district magistrate's courts since the terminology has been removed from the Principal Act.

**Clause 3** proposes to delete section 5 of cap 10 and replace it with a new section 5 which increases the pecuniary limits of the magistrates' courts. It also proposes a revision mechanism of the prescribed pecuniary limits on a periodical basis of three years by the Chief Justice in consultation with the Judicial Service Commission to ensure the law is kept up to date with the changing economic times.

**Clause 4** seeks to amend section 13 (1) by deleting the phrase which regulates the place of sitting of district magistrates courts since this term has been removed from the Act.

**Clause 5** seeks to delete section 14 which by giving immense authority to the Attorney General to determine place of sitting of magistrate courts, contravenes the provisions of the constitution on independence of the judiciary.

**Clause 6** seeks to delete Part III of the Principal Act dealing with district magistrate's courts, which have been phased out in practice. It therefore deletes section 6 on the powers of a district magistrate, section 7 on the establishment of district magistrates' courts, section 8 on the criminal jurisdiction of district magistrate's courts and section 9 on the civil jurisdiction of district magistrate's courts.

**Clause 7** seeks to delete Part IV of the Principal Act dealing with appeals from certain district magistrates courts. This is because this Act seeks to remove the concept of district magistrate's courts from the Principal Act. This part consists of section 10 on appeal from certain district magistrate courts in criminal matters, section 11 on appeal from certain district magistrate's courts in civil matters, and section 12 on powers of court on appeal.

**Clause 8** seeks to amend section 48 of the Law of succession Act; first by increasing the pecuniary limit of the magistrate courts in relation to succession matters in order to decongest the high courts, and secondly by allowing magistrates courts to handle matters related to revocation of grants under section 76 of this Act.

**Clause 9** seeks to amend section 49 of the Law of succession Act for it to reflect the provisions of section 48 as regards the pecuniary jurisdiction of magistrate's courts in succession matters.